

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**CRIMINAL ACTION NO. 3:19-CR-61
(Judge Groh)**

**JEFFREY ALLEN JOHNSON,
Defendant.**

**UNOPPOSED MOTION TO CORRECT
CLERICAL ERROR IN INDICTMENT**

The United States of America and William J. Powell, United States Attorney for the Northern District of West Virginia, by Assistant United States Attorney Kimberley Crockett, moves the court to correct a clerical error in Count Two of the Indictment pursuant to Rule 36 of the Federal Rules of Criminal Procedure. Specifically, Count Two of the Indictment charges the Defendant with Possession of Child Pornography in violation of Title 18, United States Code, Section 2252A(a)(5)(A), when the language of Count Two clearly sets forth a violation of Title 18, United States Code, Section 2252A(a)(5)(B).

Rule 36, of the Federal Rules of Criminal Procedure provides that “the court may at any time *correct a clerical error in a ... part of the record*, or correct an error in the record arising from oversight or omission.” (Emphasis added.) On November 19, 2019, the Grand Jury sitting in Martinsburg returned a two-count Indictment charging Jeffrey Allen Johnson with Distribution of Child Pornography and Possession of Child Pornography. The Indictment alleges violation of 18 USC § 2252A(a)(5)(A), instead of 18 USC § 2252A(a)(5)(B). The language of the conduct set forth in Count two of the Indictment mirrors the language set forth in code § 2252A(a)(5)(B), and further the questioning of the investigating officer before the grand

jury set forth a clear violation of 2252A(a)(5)(B).

The Defendant has signed a written plea agreement in this case indicating his desire to plead guilty to violation of Count Two, Possession of Child Pornography, in violation of 18 USC § 2252A(a)(5)(B). The government, unopposed by the Defendant, now seeks an order correcting the typographical error in the Indictment inasmuch as the change is not a substantive change that would require re-presentment to the Grand Jury. Further, there is no objection by the Defendant to entry of an order making such modification.

Wherefore, the United States seeks entry of an order correcting the typographical error in Count Two of the Indictment, changing the **(A)** to a **(B)** in the alleged violation to read as follows:

On or about May 2, 2019, in Berkeley County, within the Northern District of West Virginia, defendant **JEFFREY ALLEN JOHNSON**, did knowingly possess an image of child pornography, as defined in Title 18, United States Code Section 2256(8), which had been transported in interstate and foreign commerce by computer, and that involved a pre-pubescent minor who had not attained 12 years of age; in violation of Title 18, United States Code, Sections 2252A(a)(5)(B) and Title 18, United States Code, Section 2252A(b)(2).

Respectfully submitted,

WILLIAM J. POWELL
UNITED STATES ATTORNEY

By: /s/ Kimberley Crockett
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CERTIFICATE OF SERVICE

I, Kimberley Crockett, Assistant United States Attorney, for the Northern District of West Virginia, certify that on February 14, 2020, the foregoing **UNOPPOSED MOTION TO CORRECT CLERICAL ERROR IN INDICTMENT** was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Aaron D. Moss
Federal Public Defender Office
651 Foxcroft Ave
Suite 202
Martinsburg, WV 25401

Respectfully submitted,
WILLIAM J. POWELL
UNITED STATES ATTORNEY

By: /s/ Kimberley D. Crockett
Assistant United States Attorney